
HOUSE BILL 2068

State of Washington

60th Legislature

2007 Regular Session

By Representatives Rodne, Priest, Dunn, Hinkle, Sump, Roach, McCune, Hailey, Ahern, Kretz, Warnick, Crouse, Armstrong, Newhouse, Condotta, Ross, Schindler, Pearson, Haler, Kristiansen, Bailey, Chandler, Strow and Alexander

Read first time 02/07/2007. Referred to Committee on Judiciary.

1 AN ACT Relating to limiting the power of eminent domain; amending
2 RCW 8.04.070, 8.08.020, 8.12.030, 8.20.070, 8.25.010, and 8.25.020; and
3 adding a new chapter to Title 8 RCW.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 **Sec. 1.** RCW 8.04.070 and 1988 c 202 s 6 are each amended to read
6 as follows:

7 (1) At the time and place appointed for hearing the petition, or to
8 which the hearing may have been adjourned, if the court has
9 satisfactory proof that all parties interested in the lands, real
10 estate, premises or other property described in the petition have been
11 duly served with the notice, and is further satisfied by competent
12 proof that the contemplated use for which the lands, real estate,
13 premises, or other property are sought to be appropriated is really
14 necessary for the public use of the state, it shall make and enter an
15 order, to be recorded in the minutes of the court, and which order
16 shall be final unless appellate review thereof is sought within five
17 days after entry thereof, adjudicating that the contemplated use for
18 which the lands, real estate, premises or other property are sought to
19 be appropriated is really a public use of the state.

1 (2) Private property shall be taken by the state only for public
2 use and no greater interest shall be taken than is necessary to
3 accomplish the public use. "Public use" means only the actual
4 possession, occupation, and use of the property by the general public
5 or by the state; or the use of land for the creation or functioning of
6 public utilities or common carriers such as railroads, utilities, or
7 toll roads. The taking of private property by the state for economic
8 development does not constitute public use.

9 **Sec. 2.** RCW 8.08.020 and 1949 c 79 s 2 are each amended to read as
10 follows:

11 ~~((Any condemnation, appropriation or disposition intended in RCW~~
12 ~~8.08.010 through 8.08.080 shall be deemed and held to be for a county~~
13 ~~purpose and public use within the meaning of RCW 8.08.010 through~~
14 ~~8.08.080 when it is directly or indirectly, approximately or remotely~~
15 ~~for the general benefit or welfare of the county or of the inhabitants~~
16 ~~thereof.))~~

17 Private property shall be taken by the county only for public use
18 and no greater interest shall be taken than is necessary to accomplish
19 the public use. "Public use" means only the actual possession,
20 occupation, and use of the property by the general public or by the
21 county; or the use of land for the creation or functioning of public
22 utilities or common carriers such as railroads, utilities, or toll
23 roads. The taking of private property by the county for economic
24 development does not constitute public use.

25 **Sec. 3.** RCW 8.12.030 and 1915 c 154 s 1 are each amended to read
26 as follows:

27 (1) Every city and town and each unclassified city and town within
28 the state of Washington, is hereby authorized and empowered to condemn
29 land and property, including state, county and school lands and
30 property for streets, avenues, alleys, highways, bridges, approaches,
31 culverts, drains, ditches, public squares, public markets, city and
32 town halls, jails and other public buildings, and for the opening and
33 widening, widening and extending, altering and straightening of any
34 street, avenue, alley or highway, and to damage any land or other
35 property for any such purpose or for the purpose of making changes in
36 the grade of any street, avenue, alley or highway, or for the

1 construction of slopes or retaining walls for cuts and fills upon real
2 property abutting on any street, avenue, alley or highway now ordered
3 to be, or such as shall hereafter be ordered to be opened, extended,
4 altered, straightened or graded, or for the purpose of draining swamps,
5 marshes, tidelands, tide flats or ponds, or filling the same, within
6 the limits of such city, and to condemn land or property, or to damage
7 the same, either within or without the limits of such city for public
8 parks, drives and boulevards, hospitals, pesthouses, drains and sewers,
9 garbage crematories and destructors and dumping grounds for the
10 destruction, deposit or burial of dead animals, manure, dung, rubbish,
11 and other offal, and for aqueducts, reservoirs, pumping stations and
12 other structures for conveying into and through such city a supply of
13 fresh water, and for the purpose of protecting such supply of fresh
14 water from pollution, and to condemn land and other property and damage
15 the same for such and for any other public use after just compensation
16 having been first made or paid into court for the owner in the manner
17 prescribed by this chapter.

18 (2) Private property shall be taken by the city, town, or other
19 municipality, only for public use and no greater interest shall be
20 taken than is necessary to accomplish the public use. "Public use"
21 means only the actual possession, occupation, and use of the property
22 by the city, town, or other municipality; or the use of land for the
23 creation or functioning of public utilities or common carriers such as
24 railroads, utilities, or toll roads. The taking of private property by
25 the city, town, or other municipality for economic development does not
26 constitute public use.

27 **Sec. 4.** RCW 8.20.070 and 1927 c 88 s 1 are each amended to read as
28 follows:

29 (1) At the time and place appointed for hearing said petition, or
30 to which the same may have been adjourned, if the court or judge
31 thereof shall have satisfactory proof that all parties interested in
32 the land, real estate, premises, or other property described in said
33 petition, have been duly served with said notice as above prescribed,
34 and shall be further satisfied by competent proof that the contemplated
35 use for which the land, real estate, premises or other property sought
36 to be appropriated is really a public use, or is for a private use for
37 a private way of necessity, and that the public interest requires the

1 prosecution of such enterprise, or the private use is for a private way
2 of necessity, and that the land, real estate, premises or other
3 property sought to be appropriated are required and necessary for the
4 purposes of such enterprise, the court or judge thereof may make an
5 order, to be recorded in the minutes of said court, directing that a
6 jury be summoned, or called, in the manner provided by law, to
7 ascertain the compensation which shall be made for the land, real
8 estate, premises or other property sought to be appropriated, unless a
9 jury be waived as in other civil cases in courts of record, in the
10 manner prescribed by law.

11 (2) Private property shall be taken by the corporate or
12 governmental entity only for public use and no greater interest shall
13 be taken than is necessary to accomplish the public use. "Public use"
14 means only the actual possession, occupation, and use of the property
15 by the corporate or governmental entity; or the use of land for the
16 creation or functioning of public utilities or common carriers such as
17 railroads, utilities, or toll roads. The taking of private property by
18 the corporate or governmental entity for economic development does not
19 constitute public use.

20 **Sec. 5.** RCW 8.25.010 and 1965 ex.s. c 125 s 1 are each amended to
21 read as follows:

22 In all actions for the condemnation of property, or any interest
23 therein, at least thirty days prior to the date set for trial of such
24 action the condemnor shall serve on each condemnee who has made an
25 appearance in the action:

26 (1) A written statement showing the amount of total just
27 compensation to be paid in the event of settlement (~~on each condemnee~~
28 who has made an appearance in the action)); and

29 (2) A written statement documenting the condemnor's consideration
30 of and reasons for rejecting alternatives to the condemnation sought or
31 to the nature or extent of the condemnation sought, including but not
32 limited to any reasonable alternative suggested in writing by a
33 condemnee at least sixty days prior to the date set for trial.

34 **Sec. 6.** RCW 8.25.020 and 1999 c 52 s 1 are each amended to read as
35 follows:

36 There shall be paid by the condemnor in respect of each parcel of

1 real property acquired by eminent domain or by consent under threat
2 thereof, in addition to the fair market value of the property, a sum
3 equal to the various expenditures actually and reasonably incurred by
4 those with an interest or interests in said parcel in the process of
5 evaluating the condemnor's offer to buy the same, (~~but not to exceed~~
6 ~~a total of seven hundred fifty dollars~~) such expenditures to include,
7 but not be limited to, reasonable fees of appraisers, attorneys,
8 architects, engineers, or others reasonably retained by the condemnee.
9 In the case of multiple interests in a parcel, the division of such sum
10 shall be determined by the court or by agreement of the parties. To
11 the extent that payment of any such expenditures is not made under
12 other provisions of this chapter or under other law, the condemnor
13 shall pay for expenditures as required by this section regardless of
14 whether a trial of the condemnation action is held and regardless of
15 the outcome of any trial that is held.

16 NEW SECTION. Sec. 7. It is the intent of this title, and the
17 provisions of this title shall be so construed, that the powers of
18 eminent domain shall be exercised solely for public use, except private
19 ways of necessity, and for drains, flumes, or ditches on or across the
20 lands of others for agricultural, domestic, or sanitary purposes
21 consistent with Article I, section 16 of the state Constitution. The
22 power of eminent domain may be exercised only for a stated public use
23 and all grants and exercise of the power of eminent domain shall be
24 strictly construed. Public use shall not be equated with public
25 purpose, public interest, or public benefit, such as promoting economic
26 development, creating jobs, improving the tax base, or enhancing tax
27 revenues by building, expanding, or upgrading private retail,
28 commercial, industrial, or residential establishments. The legislature
29 intends that economic development as contemplated by the United States
30 supreme court decision in *Kelo v. City of New London*, 545 U.S. 469
31 (2005) is not and shall not be construed as public use.

32 NEW SECTION. Sec. 8. (1) Upon a final order adjudicating eminent
33 domain proceedings, the land, real estate, premises, or other property
34 described in the appropriating petition shall not be used for any use,
35 whether public or private, in whole or in part, other than the
36 contemplated and actual public use described in the final order of

1 condemnation. The contemplated and actual public use described in the
2 final order of condemnation shall be the sole use permitted.
3 Incidental private uses are prohibited.

4 (2) A final order of condemnation shall be voidable if a person
5 with interest in land that has been condemned files a petition to void
6 the order of condemnation and shows: (a) That the land, real estate,
7 premises, or other property described in the appropriating petition was
8 never physically and substantially put to the contemplated and actual
9 public use described in the final order of condemnation and that more
10 than ten years has passed since the date of the final order of
11 condemnation, or (b) that the land, real estate, premises, or other
12 property described in the appropriating petition was put to any use
13 inconsistent with the contemplated and actual public use described in
14 the final order of condemnation after the date of the final order of
15 condemnation.

16 (3) Any person who prevails in an action to void, in whole, a final
17 order of condemnation under this section appropriating lands, real
18 estate, premises, or other property described in the appropriating
19 petition shall pay back the amount of compensation received in the
20 eminent domain proceedings with interest at the market rate. Any
21 person who prevails in an action to void, in part, a final order of
22 condemnation under this section appropriating land, real estate,
23 premises, or other property described in the appropriating petition
24 shall pay back an amount of the compensation received in the eminent
25 domain proceedings with interest at the market rate with said amount to
26 be ascertained and determined by the court. Upon payment of said
27 compensation with interest to the court, that interest in the
28 appropriated land, real estate, premises, or other property which is
29 voided in the final order of condemnation shall be transferred back to
30 the person whose interest was appropriated.

31 (4) Any person who prevails in an action to void, in whole or in
32 part, a final order of condemnation under this section shall be
33 entitled to reasonable attorney fees and costs.

34 (5) Except as otherwise provided in subsections (1) through (4) of
35 this section, if any land, real estate, premises, or other property
36 ceases to be used for the contemplated and actual public use described
37 in a final order of condemnation, the previous owner of the land, real
38 estate, premises, or other property, or a beneficiary of the previous

1 owner, has the first right to reacquire the land, real estate,
2 premises, or other property for the amount of the compensation received
3 in the eminent domain proceedings with interest at the market rate, or
4 the fair market value, whichever is less, before the land, real estate,
5 premises, or other property may otherwise be sold or transferred. Upon
6 petition to the court and payment of said compensation with interest,
7 or fair market value, to the court, that interest in the appropriated
8 land, real estate, premises, or other property which has ceased to be
9 used shall be transferred upon order of the court back to the previous
10 owner, or beneficiary of the previous owner, who has exercised the
11 right to reacquire the land, real estate, premises, or other property.

12 NEW SECTION. **Sec. 9.** Sections 7 and 8 of this act constitute a
13 new chapter in Title 8 RCW.

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